

REMARKS

The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

Specification

The specification has been objected to as needing an update to the status of the continuing data.

Applicants respectfully submit that the specification has been amended to overcome the objection. In particular, the first paragraph of the specification has been amended to include a reference to U.S. Patent 6,702,744. Accordingly, Applicants respectfully request that the Examiner withdraw the objection to the specification.

35 U.S.C. § 112 Rejection, Second Paragraph

Claim 43 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully submit that claim 43 has been amended to overcome the rejection. Accordingly, Applicants respectfully request that the rejection of claim 43 be withdrawn.

35 U.S.C. §103(a) Rejection – Steward, Kaplan

Claims 1, 3 and 5-14 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,554,801 issued to Steward et al. (hereinafter “Steward”) in view of U.S. Patent No. 5,941,868 issued to Kaplan et al. (hereinafter “Kaplan”).

Applicants hereby respectfully remove Steward (i.e., U.S. Patent No. 6,554,801) as a reference.

In accordance with 35 U.S.C. §103(c)(1), “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

Steward was granted on April 29, 2003 based on an application for patent filed by another in the U.S. on October 26, 2000. The present patent application is a divisional of U.S. Patent Application No. 10/011,071 filed November 30, 2001, which claims the benefit of provisional application Serial No. 60/300,042 filed June 20, 2001. The October 26, 2000 filing date of Steward precedes the June 20, 2001 priority date of the present patent application. Applicants respectfully submit that Steward only qualifies as prior art under one or more of subsections (e), (f), and (g) of 35 U.S.C. Section 102.

In support of the required common ownership under 35 U.S.C. 103(c), it is hereby averred that the present patent application and the subject matter in Steward were, at the time the claimed invention was made, owned by the same organization or subject to an obligation of assignment to the same organization. The Applicants submit that such statement alone is sufficient evidence to establish common ownership of, or obligation of assignment to, the same organization. See M.P.E.P. 706.02(l)(2)(II).

Accordingly the Applicants respectfully submit that Steward has been removed as a reference under 35 U.S.C. 103(a) against the claims of the present patent application.

Accordingly, the rejection is believed to have been overcome.

35 U.S.C. §103(a) Rejection – Steward, Kaplan, Segal

Claim 11 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Steward in view of Kaplan as applied to claim 10 above, and further in view of U.S. Pub. No. 2002/0131974 to Segal (hereinafter "Segal").

As discussed above, Steward (i.e., U.S. Patent No. 6,554,801) has been removed as a reference. Accordingly, the rejection is believed to have been overcome.

35 U.S.C. §103(a) Rejection – Steward, Kaplan, Slepian

Claims 12 and 13 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Steward in view of Kaplan as applied to claim 1 above, and further in view of U.S. Patent No. 5,749,915 issued to Slepian (hereinafter "Slepian").

As discussed above, Steward (i.e., U.S. Patent No. 6,554,801) has been removed as a reference. Accordingly, the rejection is believed to have been overcome.

35 U.S.C. §103(a) Rejection – Steward, Kaplan, Selmon

Claims 4 and 32 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Steward in view of Kaplan as applied to claim 1 above, and further in view of U.S. Patent No. 6,514,217 issued to Selmon et al. (hereinafter "Selmon").

As discussed above, Steward (i.e., U.S. Patent No. 6,554,801) has been removed as a reference. Accordingly, the rejection is believed to have been overcome.

35 U.S.C. §103(a) Rejection – Kaplan, Slepian

Claims 38-43 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaplan alone or in view of Slepian. Without admitting that these references could or should

be combined, the Applicants respectfully submit that the present claims are allowable over Kaplan and Slepian.

Claim 38 recites:

“A method comprising:

positioning a distal portion of a delivery device at a location in a blood vessel;

imaging a thickness of at least a portion of a wall of the blood vessel at the location with an imaging assembly disposed in a lumen of the delivery device;

advancing a first portion of the distal portion of the delivery device a distance into a wall the wall of the blood vessel to a treatment site beyond an external elastic lamina of the blood vessel; and

after advancing the first portion of the delivery device, introducing a treatment agent through the first portion of the delivery device,

wherein the treatment agent comprises an inflammation-inducing agent”.

As understood by Applicants, Kaplan and Slepian do not disclose these limitations or render them obvious. In particular, as understood by Applicants, Kaplan and Slepian do not disclose or render obvious “*imaging a thickness of at least a portion of a wall of the blood vessel at the location with an imaging assembly disposed in a lumen of the delivery device,*” in combination with the other claim limitations.

For at least one or more of these reasons, claim 38, and its dependent claims, are believed to be allowable over Kaplan and Slepian.

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Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the cited art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 3/9/10

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